CIVIL ACTION NO.: 4:13-cv-01291

JURY DOCKET

DAN HAVEL, and DEAN RUCK, PLAINTIFFS, V. HONDA MOTOR COMPANY LTD., HONDA MOTOR EUROPE LTD., HONDA OF THE U.K. MANUFACTURING LIMITED, DENTSU MCGARRY BOWEN LLC, DENTSU MCGARRY BOWEN UK LTD., THE MILL (FACILITY) LIMITED, THE MILL GROUP, INC., ROGUE FILMS LTD., and DOES 1-3, DEFENDANTS.	§ § § § § § § § § § § § § § § §	IN THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF TEXAS – HOUSTON DIVISION

PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs Dan Havel and Dean Ruck file this suit against Honda Motor Company Ltd., Honda Motor Europe Ltd., Honda of the U.K. Manufacturing Limited, Dentsu McGarry Bowen LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc., and Rogue Films Ltd., showing as follows:

Nature of the Action

1. This is a civil action for damages and to enjoin acts of copyright infringement under the Federal Copyright Act and the Copyright, Designs, and Patents Act 1988 of the United Kingdom, and under theories of Texas common law fraud, misappropriation, quantum meruit, and unjust enrichment. This action arises out of the Defendants' infringement and theft by deceit of copyrighted artwork created by Havel and Ruck and protected by federal, United Kingdom

and Texas law, and the Defendants' unlawful creation of derivative works based on Havel and Ruck's copyrighted artwork.

Jurisdiction and Venue

2. This Court has jurisdiction of the subject matter of this claim under 28 U.S.C. §§1331, 1332, 1338, Fed. R. Civ. P 4(k)(2), and this Court's pendent and ancillary jurisdiction. This Court has personal jurisdiction over the parties, based on the facts pleaded below. Venue is proper in this District under 28 U.S.C. §1391 because a substantial part of the events giving rise to the claims occurred in this judicial district, because a substantial part of the property that is the subject of the actions is situated in this district, and because Defendants committed torts in this district. To the extent that the claims in this action arise under federal law, but any of the Defendants are not subject to jurisdiction in any state's courts of general jurisdiction, Plaintiffs Havel and Ruck request that the court exercise jurisdiction under Fed. R. Civ. P. 4(k)(2).

The Parties

3. Plaintiffs Dan Havel and Dean Ruck ("Havel and Ruck") are United States citizens residing in Houston, Texas. Havel and Ruck are the creators and owners of a copyrighted sculpture known as "Inversion."

4. Defendants Honda Motor Company Ltd., Honda Motor Europe Ltd., Honda of the U.K. Manufacturing Limited (collectively "Honda") are automobile design, manufacturing, marketing and distribution corporations. Each of these Defendants has received valuable benefits from both the domestic and foreign publication and distribution of the infringing works that are the subject of this suit, in which Honda, directly or in concert with and through its agents and co-defendants, illegally published the infringing works both domestically and abroad, and which were misappropriated from the Plaintiffs, in whole or part, in Houston, Texas.

5. Honda Motor Company Ltd. is a foreign corporation organized under the laws of Japan and has its principal place of business at 1-1, 2-Chome, Minami-Aoyama, Minato-ku, Tokyo 107-8556 Japan. Honda Motor Company, Ltd. is the parent and owns 100% of Honda Motor Europe Ltd. and Honda of the U.K. Manufacturing Limited. Honda Motor Company Ltd. does and is doing business in the United States through continuous and systematic contacts and purposely avails itself to the benefits of the United States, by among other things, seeking and obtaining protection of its intellectual property. Honda Motor Company Ltd. has registered hundreds of trademarks, including those to the "Honda" and "CR-V" brands, and claims use of those marks in interstate commerce. Those registrations are for the protection of the goodwill and brand of the Honda Motor Company Ltd. and constitute a significant benefit to Defendants. Honda Motor Company Ltd. has sought and obtained hundreds of copyright registrations claiming first publication in the United States for various textual and visual art works including those related to the Honda and CR-V brands. Honda Motor Company Ltd. has filed for and obtained thousands of U.S. Patents to protect its inventions in the United States and enhance the value of the Honda brand.

6. Honda Motor Europe Ltd. is a United Kingdom corporation with its principal place of business at 470 London Road, Slough, Berkshire SL3 8QY United Kingdom.

7. Honda of the U.K. Manufacturing Limited is a United Kingdom corporation with its principal place of business at Highworth Road, South Marston, Swindon, Wiltshire SN3 4TZ United Kingdom.

8. Defendants Dentsu McGarry Bowen LLC and Dentsu McGarry Bowen UK Ltd. ("McGarry Bowen"), are part of a world-wide advertising organization knows as the Dentsu Network, and conduct their business world-wide, including in Texas. Each of these Defendants has received valuable benefits from both the domestic and foreign publication and distribution of

the infringing works that are the subject of this suit, in which the McGarry Bowen Defendants, directly or in concert with and through its agents and co-defendants, illegally published the infringing works both domestically and abroad, and which were misappropriated from the Plaintiffs, in whole or part, in Houston, Texas.

9. Dentsu McGarry Bowen LLC is a New York limited liability company, with its principal place of business at 601 West 26th Street, Suite 1150, New York, New York 10001.

10. Dentsu McGarry Bowen UK Ltd. is a foreign corporation organized under the laws of the United Kingdom and has its principal place of business at 10 Hills Place, London W1F 7SD United Kingdom.

11. The Mill (Facility) Limited is a United Kingdom corporation with its principal place of business at 40-41 Great Marlborough Street, London, W1F 7JQ, United Kingdom. The Mill (Facility) Limited has received valuable benefits from both the domestic and foreign publication and distribution of the infringing works that are the subject of this suit, in which The Mill (Facility) Limited, directly or in concert with and through its agents and co-defendants, illegally published the infringing works both domestically and abroad, and which were misappropriated from the Plaintiffs, in whole or part, in Houston, Texas.

12. The Mill Group, Inc. is a New York corporation, with its principal place of business at 451 Broadway, 5th Floor, New York, New York 10013. The Mill Group, Inc. has received valuable benefits from both the domestic and foreign publication and distribution of the infringing works that are the subject of this suit, in which The Mill Group, Inc., directly or in concert with and through its agents and co-defendants, illegally published the infringing works both domestically and abroad, and which were misappropriated from the Plaintiffs, in whole or part, in Houston, Texas.

13. Rogue Films Ltd. is a foreign corporation organized under the laws of the United Kingdom and has its principal place of business at 141 Wardour Street, London W1W0UT United Kingdom. Rogue Films Ltd. has received valuable benefits from both the domestic and foreign publication and distribution of the infringing works that are the subject of this suit, in which Rogue Films Ltd., directly or in concert with and through its agents and co-defendants, illegally published the infringing works both domestically and abroad, and which were misappropriated from the Plaintiffs, in whole or part, in Houston, Texas.

14. Throughout the time period of events relevant to Havel and Ruck's claims in this action, and continuing through the present, each of the named Defendants, individually, or jointly, acting in concert, has infringed and is continuing to infringe Havel and Ruck's copyrighted sculpture and Havel and Ruck's copyright by the unauthorized use and distribution of derivative works, and has committed and is continuing to commit the breaches and torts complained of below, or has actively assisted one or more of the other named Defendants in doing so. Likewise, throughout the time period of events relevant to Havel and Ruck's claims in this action, and continuing through the present, each of the named Defendants has acted and is continuing to act as each other's agents in the acts of copyright infringement, breaches, and torts complained of below, as part of a joint commercial enterprise. In particular, the Defendants entered into an express or implied agreement the purpose and object of which resulted in the infringement of Havel and Ruck's copyright, they did so with a common commercial purpose carried out together by the group, they possessed a community of pecuniary interests in their common purpose and object, and each of them possessed at a minimum an authoritative voice or a right to be heard concerning conduct of the joint enterprise. The actions of the Defendants also constitute a combination of two or more persons to accomplish an unlawful purpose, in which there was an agreement to conspire, participation by each of the named Defendants in

furtherance of the conspiracy, and the conspiracy proximately caused actual damage and loss to Havel and Ruck. Therefore, whenever it is alleged in this Complaint that any individual Defendant did or failed to do any act or thing, it is meant that all the Defendants, acting together and in concert, as part of a joint commercial enterprise, or as part of a civil conspiracy, or as each other's agents, did or failed to do the act or thing.

15. Upon information and belief, Defendants Does 1-3 are affiliates of Defendant Honda Motor Company Ltd, whose juridical identities are currently unknown to the Plaintiffs.

16. Dan Havel and Dean Ruck are the creators of a sculptural work called "Inversion." Havel and Ruck created the work in Houston, Texas in 2005 and published the work on May 1, 2005. Inversion is an original work that is copyrighted under United States law. On February 20, 2013, Havel and Ruck applied to the copyright office and received a Certificate of Registration for Inversion, also dated February 20, 2013, bearing the Registration Number VA 1-847-027. Photos of the work submitted with the registration from the Copyright Office, along with a copy of the certificate itself, are attached to this Complaint as Exhibit 1.

17. Inversion is a sculpture originally made from the wooden boards of a house and shaped into a portal-like conical structure leading from the front of a house to the back. As more fully shown in the copyright registration, the boards flare outward in varying lengths along the periphery of the cone and have varying coloration along the length of some of the boards. The cone is largest on the front of the house tapering back towards the back of the cone.

18. Inversion has received numerous awards and acclamation in the art community throughout the world and is featured in several art books, magazines, art blogs, and other publications, including an appearance in Ripley's Believe it or Not. Photographs of Inversion have been widely available on the Internet and viewed by millions of people around the world. Dan Havel and Dean Ruck are the owners of the copyrighted work and all derivative works

pertaining thereto. As a consequence of the notoriety of Inversion, Havel and Ruck have developed a valuable brand associated with architectural deconstructions in the style of Inversion. Inversion is Havel and Ruck's calling card, and continues to serve as the source of several commissions and business opportunities. Havel and Ruck, both of whom reside in Houston, Texas capitalize on Inversion through their regular business activities in Houston, Texas.

19. In June 2012, representatives of Defendants Honda Motor Europe Ltd., McGarry Bowen UK Ltd., and Dentsu McGarry Bowen LLC met to discuss an advertising "pitch" under which McGarry Bowen UK Ltd., and Dentsu McGarry Bowen LLC proposed developing a large scale advertising campaign for Honda's newly redesigned CR-V sport utility vehicle. To illustrate the CR-V's versatility, the McGarry Bowen entities proposed a concept where a CR-V would be driven through a portal. Together McGarry Bowen UK Ltd. and Dentsu McGarry Bowen LLC pitched the idea to Honda, with assurances that Dentsu McGarry Bowen LLC, a United States based entity, would be providing strategic support for the project. Both McGarry Bowen UK Ltd. and Dentsu McGarry Bowen LLC considered Honda to be an important account, which might yield not only financial benefits associated with the CR-V campaign, but also the possibility of future valuable business with the Honda family. To emphasize this importance, Gordon Bowen, who is a McGarry Bowen founder and serves as McGarry Bowen's Chief Creative Officer, flew from New York to London to participate in the presentation on behalf of both McGarry Bowen UK Ltd. and Dentsu McGarry Bowen LLC.

20. Honda Motor Europe Ltd. and McGarry Bowen UK Ltd. subsequently entered into an agreement that covered the production of the television advertisement for the CR-V campaign. The goal of the campaign was to enhance not only sales of the CR-V in Europe, which are manufactured by Defendant Honda of the U.K. Manufacturing Limited, but to also

enhance and benefit the Honda and CR-V brands, owned by Defendant Honda Motor Company Ltd. Honda vehicles are sold under the Honda brand developed by Honda Motor Company Ltd. Advertisements and promotions of the CR-V, including the advertisement and other infringing works that are the subject of this suit, do not identify any particular Honda subsidiary or affiliate, but instead refer more generally to the "Honda CR-V." These infringing works therefore enhance the Honda brand which is owned by Defendant Honda Motor Company Ltd., the use of which is authorized by Honda Motor Company Ltd. to its subsidiary and affiliated entities, including Defendants Honda Motor Europe Ltd. and Honda of the U.K. Manufacturing Limited. Enhancement to the brand equity of Honda and the CR-V is a direct benefit resulting from this advertising campaign and its use of Plaintiff's copyrighted work. Upon information and belief, Honda Motor Company Ltd, the corporate parent and owner of the Honda and CR-V brands, appoints and utilizes its affiliates and subsidiaries, including Honda Motor Europe Ltd., to promote these brands. Honda Motor Company Ltd provides funding, credit or both to its subsidiaries, including Honda Motor Europe Ltd, to facilitate brand promotion through advertising expenditures.

21. Upon information and belief, Honda Motor Europe Ltd. was consciously aware that any advertising campaign involved risks associated with the use of images and other materials which might expose it to liability unless permission is obtained from rights holders to those images. Honda Motor Europe Ltd. was consciously aware that it owed a duty to holders of intellectual property rights not to use that property without permission and possibly compensation. In order to mitigate its risk, Honda Motor Europe Ltd. contractually delegated its duty and responsibility for ensuring that any images used in the campaign were in fact used with permission and authority to its contracting partner, McGarry Bowen UK Ltd. In turn, upon information and belief, McGarry Bowen UK Ltd. and Dentsu McGarry Bowen LLC, also knew

that they owed a duty to holders of intellectual property rights not to use that property without permission and possibly compensation, and, in order to secure the business from Honda, agreed to indemnify Honda and its affiliates from liability arising from the infringement of intellectual property rights of others. McGarry Bowen insures against these risks through third party insurance coverage.

22. In order to fulfill its contractual obligations to Honda, McGarry Bowen UK Ltd. collaborated with a film director affiliated with a London based production company, Defendant Rogue Film Ltd., along with an editing and digital effects company known as The Mill Group. Upon information and belief, personnel employed by both The Mill (Facility) Limited and The Mill Group, Inc., through its offices in California, as well as other persons or entities from the United States and Canada, performed services in connection with the creation of the CR-V advertisement. During the course of the creation of the Honda CR-V commercial that is the subject of this case, Defendants Honda Motor Europe Ltd., Dentsu McGarry Bowen LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc., and Rogue Films Ltd. collaborated jointly, and in furtherance of a joint commercial enterprise, to produce the Honda CR-V commercial that is the subject of this case. Their collaboration involved a common commercial purpose, namely the creation and distribution of an advertisement and advertising campaign to promote sales of the Honda CR-V in Europe, which are manufactured by Honda of the U.K. Manufacturing Limited, and to enhance the Honda and CR-V brands belonging to the Defendant Honda Motor Company Ltd. All of the named Defendants, including Honda Motor Company Ltd. and Honda of the U.K. Manufacturing Limited, possessed a community of pecuniary interests in their common purpose and object. For the Honda Defendants, their pecuniary interests included increasing Honda CR-V sales and enhancing the Honda and CR-V brands, the benefits of which flowed directly to all of the named Honda

Defendants in this suit. For Defendants Dentsu McGarry Bowen LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc., and Rogue Films Ltd., their pecuniary interests included compensation for producing the advertisement as well as burnishing their reputations on account of representing and developing a commercial relationship with a multi-national organization such as Honda. Defendants Honda Motor Europe Ltd., Dentsu McGarry Bowen LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc., and Rogue Films Ltd. each possessed at a minimum an authoritative voice or a right to be heard concerning conduct of the joint enterprise. Defendant Honda Motor Europe Ltd. maintained ultimate authority and a right to be heard concerning approval and funding of the campaign. Defendants Dentsu McGarry Bowen LLC, Dentsu McGarry Bowen UK Ltd., The Mill (Facility) Limited, The Mill Group, Inc., and Rogue Films Ltd. possessed authority and a right to be heard concerning the creation of the advertisement, its distribution, or both.

23. During the course of the advertisement's development, a physical version of Inversion was re-created by Defendants in Vancouver, British Columbia and which was a copy of the original work. The Vancouver sculpture was used in the making of the film version of the advertisement. The final ad, called Honda Leap, was and is shown throughout the world and in this district on YouTube and Vimeo and was the central feature to the Honda CR-V European and United Kingdom advertising campaigns. In fact, affiliates of the Japanese parent Honda Motor Company Ltd. located in at least Ireland, Norway, and Italy (Defendants Does 1-3) posted the film version of the advertisement on YouTube, the purpose being to publicize the ad campaign throughout Europe and the world. The advertisement has been seen by tens of thousands of viewers through the Honda affiliated postings alone. Honda Motor Europe Ltd. also maintains a YouTube channel, although it is unknown at this time whether they ever posted the infringing advertisement. However, Honda Motor Europe Ltd.'s website directs visitors to "find

them" on YouTube and Facebook, both of which transfer, process and use data from their customers in the United States, and both of which require resolution of any disputes with their customers to occur in the United States. The advertisement has also been used in numerous other videos, television ads, print ads, and internet pages, and various derivative works have been created that also infringe upon the copyrighted work. All of the McGarry Bowen Defendants, The Mill Defendants, and Rogue Films Ltd. prominently display infringing works in their marketing materials and on their websites, which are purposely targeted at United States markets, including Texas. The Defendants worked together on this ad campaign and contributed to the creation of several infringing works. In fact, the Defendants considered the advertisement to be such a feather in their collective caps, they collaborated in producing a "making of" video concerning the advertisement, which was posted by The Mill Defendants on their website. The McGarry Bowen website now lists "Honda" as one of their key clients.

24. All of the McGarry Bowen Defendants named in this suit, all of The Mill Defendants, and Rogue Films Ltd. maintain their own channels on YouTube or Vimeo, both video sharing sites based in the United States, for the purpose of promoting themselves in the United States and promoting the infringing video. These sites utilize domestic servers and infrastructure which permit access worldwide, and these Defendants made no attempt to restrict access to these postings to any particular locale. According to the YouTube terms of service, YouTube controls all services from within the United States, and its relationships with users of the site is governed by domestic law. Vimeo also governs its relationship with users under domestic law. These Defendants targeted their postings in part to a domestic audience, including in Texas.

25. On or about August 1, 2012, following an unsolicited call, Dean Ruck received an email from a representative of Defendants Rogue Films and The Mill asking whether they could

use a portal through a wooden house in an advertising campaign for Honda. Mr. Ruck asked to see a mockup of the advertisement to determine if it had any bearing on the copyrighted work Inversion. Rogue Films Ltd. submitted to Mr. Ruck several generic versions of conical mockups, none bearing any resemblance to Inversion. Based on the representations, as set forth in the mockups, that the proposed advertisement would not copy Havel and Ruck's Inversion, Ruck indicated that he did not believe a generic portal created any issue with their copyright.

26. However, soon after, an acquaintance of Havel and Ruck contacted them asking about their "project" in Vancouver, which was constructed on a public right of way. Pictures of the Vancouver set then appeared on the website Reddit, which Havel and Ruck viewed. Justifiably concerned that they had been misled about Honda's intentions, Havel and Ruck contacted Defendants' agent, Kate Hutchins. Ms. Hutchins attempted to assuage their concerns by submitting a link to a website to Mr. Ruck that contained the near finished video. The link was to a video that later was placed by Rogue and The Mill on YouTube, and also made available on the websites of Rogue, The Mill, and McGarry Bowen, which showed an identical or derivative version of a house with a conical portal as created by Plaintiffs and copyrighted as Inversion. The final advertisement depicted a Honda CR-V being driven into Inversion's large opening with narration dubbed over by Garrison Keillor, famous for his radio show The Prairie Home Companion and the voice of Honda commercials. Defendants have admitted infringement of the copyrighted work by attributing the work to Havel and Ruck on the video and on the McGarry Bowen, Rogue, and The Mill websites.

27. Before the advertisement aired publicly, Havel and Ruck objected to the use of their copyrighted work Inversion and told the Defendants not to use it without their permission and adequate compensation. The Defendants were therefore consciously aware that their proposed advertisement infringed on Havel and Ruck's intellectual property rights. Upon

information and belief, at least the Defendants Rogue Films Ltd., Dentsu McGarry Bowen LLC, and Dentsu McGarry Bowen UK Ltd. were aware of Havel and Ruck's objections. Rogue offered Havel and Ruck a token amount and claimed they believed that they had obtained a license to use the work. However, without obtaining any permission or commercial agreement from Havel and Ruck, the Defendants determined to proceed with the campaign knowing that their conduct constituted torts against persons who reside in this judicial district. There is no written or oral license or other grant of rights from Havel or Ruck to anyone associated with the Honda commercial, Havel and Ruck received no consideration for the use of their intellectual property, and Havel and Ruck clearly communicated before the advertisement ran that the commercial was a violation of their copyright and that use of Inversion was not authorized or licensed in any manner.

FIRST CAUSE OF ACTION—DAMAGES FOR COPYRIGHT INFRINGEMENT

28. Havel and Ruck incorporate by reference paragraphs 1 through 27 of this Complaint, as if fully set forth herein.

29. 17 U.S.C. §106 states that the owner of a copyright has the exclusive right to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies; (2) to prepare derivative works based upon the copyrighted work; and (3) to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. In violation of law, Defendants obtained visual depictions of Inversion originating in Houston, Texas and illegally, and on false pretenses, and without a right or authorization to do so, created numerous infringing copies and derivative works. The Defendants obtained images of Havel and Ruck's copyrighted works from websites and possibly other written publications, which originated in Houston, Texas. The Defendants knew that their illegal activities would have a direct effect in Houston, Texas by depriving Havel and Ruck of their legal right to capitalize on

intellectual property owned by them. The Defendants have shown the video domestically, in Houston, Texas, and abroad, without authorization or right since 2012, and they continue to do so. The Defendants are therefore infringing users, in violation of law.

A. The Defendants committed domestic acts of infringement, including illegally and without authorization showing videos of the work, print ads, and online ads in the United States, the United Kingdom, Europe and throughout the world, illegally and without authorization;

B. The Defendants have obtained benefits and profits from the illegal use of the copyrighted work originally obtained by distributing the work in the United States, the United Kingdom, Europe and throughout the world;

C. The Defendants are liable for contributory infringement by, with knowledge of the infringing use, inducing, causing and materially contributing to the infringing conduct occurring in the United States, the United Kingdom, Europe and throughout the world.

30. Defendants have violated Havel and Ruck's copyrights in the use and control of Inversion. Defendants are infringers of Havel and Ruck's copyrights, as set forth above. Havel and Ruck have suffered actual damages as a result of the infringement, including lost fees for use of the copyrights. Defendants have generated profits and advantages from the illegal use of the copyrighted work including, but not limited to, fees generated to create and place the advertising campaign, the video, print ads, and in the sale of Honda motor vehicles attributable to the use of the copyrighted work. Defendants are liable to Havel and Ruck for their actual damages and profits attributable to the infringement, including all benefits obtained from the illegal use of the copyrighted work and the value of the enhanced status of the Honda and CR-V brands. Havel

and Ruck are also entitled to injunctive relief to prevent further use of the copyrighted work in the United States. Havel and Ruck suffered the direct effects of this tort in Houston, Texas.

COUNT TWO—INFRINGEMENT OF UNITED KINGDOM COPYRIGHT LAW

31. Havel and Ruck incorporate by references paragraphs 1 through 30 of this Complaint, as if fully set forth herein.The law of the United Kingdom provides for damages and an accounting of profits for infringement of a copyrighted work and all uses in derivative works. The copyright in the work was obtained in 2005 upon creation of the work, and under the Berne Convention is recognized by the United Kingdom and all of the countries in the European Union without regard to further acts of registration.

32. Under the Copyright, Designs and Patents Act 1988 (hereinafter "The United Kingdom Copyright Act") in force in the United Kingdom, infringement of a copyright is compensable in actual damages and an accounting of profits, including all benefits obtained from the illegal use of the copyrighted work such as the value of the enhanced status of the Honda and CR-V brands, plus any additional damages as justice may require, including an award of costs and attorneys' fees. As residents of the United States, a Berne Convention country, Havel and Ruck are entitled to make a claim under the United Kingdom Copyright Act.

33. Havel and Ruck are entitled to an award of damages, profits, or both on account of Defendants' infringing use of the copyrighted work. Havel and Ruck are also entitled to injunctive relief to prevent further use of the copyrighted work in the United Kingdom or Europe. Havel and Ruck suffered the direct effects of this tort in Houston, Texas.

COUNT THREE—FRAUD AND MISREPRESENTATION

34. Havel and Ruck incorporate by reference paragraphs 1 through 34 of this Complaint, as if fully set forth herein.

35. The Defendants made false representations of fact to induce Havel and Ruck to

provide verbal approval to a generic portal concept, or failed to disclose material facts, which they had a duty to disclose. The details concerning these representations and omissions of material fact are set forth above at paragraphs 25-27 and elsewhere in this Complaint. By misrepresenting the nature of its use of the portal concept, the Defendants delayed action by Havel and Ruck while all the time Rogue, The Mill Group defendants, the McGarry Bowen defendants, and Honda Motor Europe Ltd had the intention of using a copy of Inversion, and derivative works, without license or compensation.

36. Havel and Ruck relied on the false representations or nondisclosures to a material degree, including by losing any ability to demand payment in advance for the use of their copyrighted work, and because they were induced by fraud to forbear taking legal remedies and seeking an injunction prior to the airing of the commercial.

37. Havel and Ruck's reliance on the false representations or nondisclosures caused damages to Havel and Ruck, the direct effects of which were suffered in Houston, Texas.

38. Havel and Ruck are also entitled to an award of exemplary damages because Havel and Ruck have suffered harm resulting from fraud, malice or gross negligence, as those terms are defined at Chapter 41 of the Texas Civil Practices and Remedies Code, and because the conduct was committed knowingly or intentionally. Havel and Ruck plead that the amount of exemplary damages may be unlimited, subject only to the discretion of the jury and constitutional bounds.

COUNT FOUR—QUANTUM MERUIT, UNJUST ENRICHMENT

39. Havel and Ruck incorporate by reference paragraphs 1 through 39 of this Complaint, as if fully set forth herein.

40. The Defendants have been unjustly enriched by their wrongful actions. Under the circumstances, Havel and Ruck had a reasonable expectation that they would be paid for use of

their copyrighted work. Indeed, Defendants admit as much in offering a token amount to Havel and Ruck after the work was improperly used. Further, Honda has featured the work in a successful ad campaign for the Honda CR-V throughout the United Kingdom and Europe, as well as through their proxy co-defendants in the United States, which has enhanced the sales of cars generating profits to Honda. The McGarry Bowen Defendants, The Mill Defendants, and Rogue, received money for the creation and media placement of the ad campaign and those profits are attributable to the copyrighted work. Defendants knew they were using a copyrighted work having attempted unsuccessfully to obtain authorization from the creators of the work. Before the advertisement was publicly aired, Defendants knew and were told by Havel and Ruck that their use was unauthorized, unlicensed and in violation of the copyright. Defendants Honda Motor Company Ltd. and Honda of the U.K. Manufacturing Limited obtained significant benefit to their brand and brand equity in Europe, the United States, and elsewhere as a result of the illegal use of the copyrighted work.

41. Havel and Ruck are entitled to a disgorgement of all benefits, profits and revenues obtained by the Defendants from their wrongful conduct under quantum meruit, or to replace avoided license fees, in connection with that conduct. The Defendants' conduct was willful, malicious, and without justification.

COUNT FIVE—INJUNCTIVE RELIEF

42. Havel and Ruck incorporate by reference paragraphs 1 through 42 of this Complaint, as if fully set forth herein.

43. The Defendants are continuing to use and infringe copyrighted material belonging to Havel and Ruck. The harm to Havel and Ruck is ongoing. Unless enjoined now, and after trial, permanently, from this illegal infringement, the harm will be irreparable and Havel and Ruck have no adequate remedy at law. Injunctive relief is available under Rule 65 and under 17

U.S.C. §§502 &1203 and under the United Kingdom Copyright Act. Havel and Ruck therefore request that the court enter a preliminary injunction before trial, and thereafter, a permanent injunction, prohibiting any additional infringing use of Havel and Ruck's copyrighted artwork, and prohibiting Defendants from generally using designs generated by use of Havel and Ruck's copyrighted artwork in the market.

DEMAND FOR JURY TRIAL

44. Havel and Ruck demand a jury trial on all issues for which a jury trial is permissible.

PRAYER

WHEREFORE, Havel and Ruck request that the Defendants be cited to appear and answer and that Havel and Ruck obtain the following relief:

1. Judgment in favor of Plaintiffs for compensatory, actual, additional, exemplary and multiplied damages in an amount to be proven at trial, for which Defendants should be jointly and severally liable;
2. After notice, a preliminary injunction under Rule 65, and thereafter upon a favorable verdict, a permanent injunction, preventing Defendants from additional infringement of Plaintiffs' copyrighted artwork and generally using designs generated by use of Plaintiffs' copyrighted artwork in the market;
3. Judgment that Defendants, jointly and severally, have infringed Plaintiffs' copyrights in Inversion;
4. Judgment that Defendants pay all damages, jointly and severally, under common law or by statute, including actual damages, sustained by Plaintiffs resulting from or proximately caused by Defendants' infringement of Plaintiffs' copyrights, and

to compensate Plaintiffs for such infringement, and that such damages be trebled for Defendants' willful infringement;

5. Judgment that Defendants account for and pay as damages to the Plaintiffs all profits and advantages gained from infringement of copyright under United Kingdom law, and all profits and advantages gained from infringing the Plaintiffs' copyrights;

6. Judgment that Defendants deliver for impoundment all copies of the infringing works and derivative works in the Defendants' possession or control;

7. Judgment that Defendants, jointly and severally, pay the Plaintiffs' costs, expenses, disbursements, and attorneys' fees (as applicable under the United Kingdom Copyright Act) herein;

8. Judgment that Defendants pay pre-judgment and post-judgment interest, jointly and severally, at the maximum lawful rates; and

9. Any other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

THE FELDMAN LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2013 that a copy of the foregoing document is being electronically filed with the Clerk of the United States District Court for the Southern District of Texas by using the CM/ECF system, which will send notice of such filing to all counsel of record.

/s/
Arthur S. Feldman